IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3170 OF 1996

PETITIONER: Vyapari Sahakari Bank Maryadit, Chatigalli, Solapur.

VERSUS

RESPONDENTS:

1) Ambure P.A.

2) Mangrule J.S.

3) Bet P.G.

4) Chandak R.S.

5) Dayama L.S.

All respondents residing at Block No. 9, Sanmati Nagar, Near Bharati Vidyapeeth, Vijapur Road, Solapur.

6) Shri R.U. Ingule, Member, Industrial Court, Maharashtra, having his office at Solapur.

WITH

WRIT PETITION NO. 3173 OF 1996

PETITIONER: Vyapari Sahakari Bank Maryadit, Paschim Mangalwar Peth, Solapur.

VERSUS

RESPONDENTS:

1) Rajgopal Malmukund Chandak, Age: Adult, Occupation: Service, residing at 11/7, Nilanagar, Solapur.

2) Rajaram Apparao Dasgunde, Age: Adult, Occupation Service, Residing at 406, Paschim Mangalwar Peth, Solapur.

3) Laxminarayan Shrikisan Dayama, At & Post Bale, Near Khandoba Temple, Tal. North Solapur, Dist. Solapur.

4) Shankar Rachappa Motagi, Age: Adult, Occupation : Service, residing at 120, Gold Finch Peth, Solapur.

5) Balkrishna Shantaram Bhasme, Age: Adult, Occupation : Service, residing at 716, Paschim Mangalwar Peth, Solapur.

6) Jagannath Sharnappa Mangrule, Age: Adult, Occupation : Service, residing at 4/1, Budhwar Peth, Solapur.

7) Ratilal Kisanlal Bhandari, Age: Adult, Occupation : Service, residing at 194/1, Budhwar Peth, Solapur.

8) Nandkishor Jagannath Jaju, Age: Adult, Occupation : Service, Residing at Chandak Bagicha, Solapur.

9) Ramkrishna Manikchand Pardeshi, Age: Adult, Occupation : Service, residing at 139, South Kasaba, Solapur.

10) Rajgopal Maganlal Mantri, Age: Adult, Occupation : Service, residing at 139, Paschim Mangalwar Peth, Solapur.

11) Prashant Govind Bet, Age: Adult, Occupation : Service, residing at 15, Guruwar Peth, Solapur.

12) Prashantkumar Anant Ambure, Age: Adult, Occupation : Service, residing at 9-A, Sanmant Nagar, Vijapur Road, Solapur.

13) Shivaji Kallapa Lohar, Age: Adult, Occupation : Service,, residing at Bhawani Peth, Upase Wada, Solapur.

14) P.S.Rajmane, Age: Adult, Occupation : Service, residing at North Kasaba, Near Kirit Math, Solapur.

15) Shri R.E. Miniyar, First Labour Court, having his office at Solapur.

16) Shri R.U. Ingule, Member, Industrial Court, Maharashtra, having his office at Solapur.

Mr.P.K.Rele, Advocate, with Mr. Piyush Shah, Advocate, for the Petitioner,

Mr.Neel Helekar, Advocate, with Mr. S.M.Dharap, Advocate, for Respondents

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CORAM : V.C.Daga, J

DATED : 7th June 2006

JUDGMENT :

These two writ petitions, filed under Article 226 of the Constitution of India, are directed against two separate orders dated

15.1.1996 and 17.1.1996 respectively passed by the Industrial Court, Solapur; one rejecting contention of the employer that the strike resorted to by the respondents-employees of the petitioner Bank was illegal and by another order holding that the petitioner-Employer Bank has committed unfair labour practice under Item 8 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act for short) by recruiting employees during the period of legal strike.

2. These petitions involve common question of law based on identical facts; as such both petitions are being disposed of by this common judgment.

Introductory Facts :

3. The petitioner is a Co-operative Society duly registered under the Maharashtra Co-operative Societies Act, 1960, engaged in the business of

banking, having its registered office at Solapur.

4. The respondents are the employees of the Bank and claimed to represent all employees-workers working in the Bank.

5. The employees of the Bank submitted their Charter of Demands on 4.3.1989. They claimed to have forwarded copies thereof to the concerned authorities as required by law. According to them, the Bank management did not pay heed to their demands. Consequently, in order to press their demands, the employees-workers on 6.4.1989 served strike notice on the Bank management in consonance with the provisions of the MRTU & PULP Act, 1971.

6. The respondents-employees of the Bank went on strike with the expiry of the notice period since there was no positive response from the Bank management to consider their demands.

7. The employees - workers

alleged that the petitioner Bank recruited some of the employees during the period of strike. Consequently, on 24.4.1989 the employees filed complaint under section 28 invoking item 8 of Schedule IV of MRTU & PULP Act, alleging unfair labour practice on the part of petitioner-Bank.

8. The complaint was tried on merits by the Industrial Court, Solapur and vide its judgment & order dated 17.1.1996, the Industrial Court was pleased to hold that the employer-Bank has committed unfair labour practice under Item 8, Schedule IV of MRTU & PULP Act and directed the Bank to cease & desist from continuing to commit unfair labour practice and also awarded the cost of Rs. 5,000/- payable to the complainant-employees.

9. The petitioner Bank during the pendency of the aforesaid complaint on 28.4.1989 filed before the Labour Court, Solapur, Strike BIR Application No. 1 of 1989 under Section 78, 79, 80A and 97 of the BIR Act, alleging illegal strike and sought declaration of illegality thereof.

10. The aforesaid application was tried by the Labour Court on its own merit and after hearing parties to the application, the Labour Court was pleased to reject the said application vide its order dated 5.8.1989 holding that the strike resorted to by the employees of the Bank was not illegal since provisions of the MRTU & PULP Act were followed.

11. Being aggrieved by the aforesaid order of the Labour Court dated 5.8.1989, the revisional jurisdiction of the Industrial Court, Solapur, was invoked by the petitioner-Bank.

12. The Industrial Court vide its judgment and order dated 15.1.1989 was pleased to hold that there was no need for serving approach notice under Section 42 (2) of the BIR Act on employer as it was open for the employees to opt to serve notice of strike under Section 24 of the MRTU & PULP Act. In this view of the matter, the Court held that it was obligatory on the part of petitioner- Bank to make reference to the Labour Court under Section 25 of the MRTU & PULP Act to

seek declaration of illegality of the strike, if it so desired. In other words, it was held that it was not open for the petitioner-Bank to resort to the provisions of the BIR Act to get the strike declared as illegal.

13. The petitioner Bank, not satisfied with the aforesaid two separate orders of the Industrial Court, has invoked writ jurisdiction of this Court to challenge the aforesaid orders dated 15th January, 1989 and 17th January, 1989.

Rival Submissions :

14. Mr. P.K. Rele, learned senior counsel appearing with Mr. Piyush Shah, Advocate, would submit that it is not in dispute that the provisions of BIR Act and MRTU & PULP Act both are applicable to the industry in question. He, thus, submits that the employees covered under BIR Act cannot resort to a strike without compling with the provisions of the said BIR Act.

15. In the submission of

Mr.Rele, it was obligatory on the part of the employees to comply with the provisions of Section 42 of the BIR Act in general and sub-section (2) of Section 42 in particular, which deals with notice of change. According to him, Section 97 of the Act deals with strikes. Sub-Section (1) (b) of Section 97 provides that the strike shall be illegal if it is commenced or continued without giving notice in accordance with the provisions of Section 42 of the BIR Act. Admittedly, according to him, the employees concerned did not give any such notice as required under Section 97(1)(b) of the BIR Act. Mr.Rele, therefore, submits that the strike resorted to by the workers in support of their Charter of Demands was illegal.

16. Mr.Rele would further submit that the BIR Act, being a special Act, provides for the manner of pursuing the demands for revision before proceeding on strike in support thereof. He submits that, the findings recorded by the Courts below that notice under Section 24 of the MRTU & PULP Act was adequate; since the

petitioner Bank was also covered under the said Act, is erroneous in law.

17. Mr.Rele submits that the justification sought to be given by the Courts below holding that there was no representative union and since individuals were pursuing their demands, the individuals had no remedy under the BIR Act and, therefore, the finding that the employees were justified in giving notice under Section 24(1) of the MRTU & PULP Act is also erroneous in law.

18. In the submission of Mr.Rele, whether a representative union existed or not is not relevant. Section 28(1) of the BIR Act provides that when there is no representative union in respect of any industry in a local area, the employees in each undertaking in the industry and in each occupation therein may in the prescribed manner elect five persons from, amongst themselves, to represent them for the purposes of the BIR Act. The BIR Act clearly provides for election of five persons to represent workers under the BIR Act. He submits

that Section 30 which deals with representative of employees clearly provides that subject to the provisions of Section 33(a), the persons elected by employees in accordance with the provisions of Section 28 or where the proviso to sub-section (1) thereof applies the employees themselves can represent themselves. Mr. Rele, therefore, submits that the finding recorded by the Court that the employees had no remedy and, therefore, they were justified in giving notice of strike under Section 24 of the MRTU & PULP Act is erroneous.

19. Mr. Rele further submits that there is absolutely no repugnancy between the MRTU & PULP Act and BIR Act. Both legislations are complementary to each other and therefore, it was necessary on the part of the employees to comply with the provisions of both the legislations. He sought to borrow assistance from the judgment of the learned Single Jude of this Court in the case of **Balmer Lawrie & Co. Ltd. vs. Balmer Lawrie Employees' Union, Bombay & others** (1989 L.I.C. 88), wherein the

question as to the repugnancy between the MRTU & PULP Act and the Industrial Disputes Act was considered and finding was reached that there exist no repugnancy between these two legislation.

20. In the submission of Mr.Rele, the ratio of the aforesaid judgment would apply with equal force to an establishments covered under the BIR Act. He submits that although strike may not be illegal under the MRTU and PULP Act, the very strike could be illegal under the BIR Act. He, thus, submits that the BIR Application filed by the petitioner-Bank needs to be allowed and the judgment of the Industrial Court in Complaint (ULP) No. 45/89 that the strike was not illegal is liable to be set aside. He, thus, prayed that both petitions be allowed with costs.

Per Contra :

21. Mr. Helekar, learned counsel appearing for the respondents-employees on the other hand submitted that the writ petition filed by the petitioner-Bank challenging the orders of the Labour Court

and Industrial Court in revision is liable to be dismissed; since the view taken by the Courts below is reasonable and possible view.

22. Mr.Helekar submits that there was no representative or qualified or approved or primary union as contemplated under the BIR Act, therefore, the complainants/ respondents were, incapacitated to give a strike notice as required under Section 42(2) of the BIR Act. In his submission, looking to the scheme of BIR Act, except the representatives of employees, no other person or body of persons have any right individually or collectively either to give a notice under sub-section (2) or (4) of Section 42 of the BIR Act.

23. Mr.Helekar placed reliance on the text of Section 30 of the BIR Act to contend that the only persons who are described as “representatives of employees” were entitled to take steps in case of grievances of the employees. He submits that even Section 33 of the BIR Act prohibited any other employee or his

representative even to appear in proceedings or represent an employee. The Act was, subsequently, amended by introducing Section 33A. Mr.Helekar, thus, tried to borrow assistance from the amended provision and sought to justify the findings recorded by the Courts below. He placed reliance on the judgment of the Division Bench of this Court in the Case of **Nagpur District Central Co-Op. Bank vs. State of Maharashtra & ors. [1987 (II) CLR 283]**, wherein approach notice under Section 42(2) of the BIR Act by the employees before filing complaint under Section 28 of the MRTU & PULP Act was held not necessary. In the submission of Mr.Helekar, the MRTU & PULP Act is a complete code by itself as such compliance of the provisions of other Act was not necessary.

24. Mr.Helekar further submits that the reliance placed by Mr.Rele on the judgment of this Court in the case of **Balmer Lawrie & Co. Ltd.** (cited supra) is misplaced. According to him, the said judgment has no application to the facts of the present case.

25. Mr. Helekar turning to the another petition challenging the order holding that the unfair labour practice has been committed by the petitioner Bank falling under item 8 of Schedule IV of the MRTU & PULP Act; submits that it is not in dispute that the notice of strike was issued and served on 6.4.1989. Strike commenced after expiry of the notice period. During the continuance of the strike, the employer Bank resorted to employ employees on ad hoc basis. In his submission, these facts constituted an unfair labour practice on the part of the employer covered under Item 8, Schedule IV of the MRTU & PULP Act.

26. Mr.Helekar, lastly, placed reliance on the statutory bar created by section 59 of the MRTU & PULP Act; to contend that it was not open for the petitioner to approach Labour Court; since the proceedings under the MRTU & PULP Act were already instituted. He, thus, submits that the Court below was perfectly justified in holding the petitioner Bank guilty of unfair labour

practice and, consequently, directing it to cease & desist from continuing the very unfair labour practice.

27. In the submission of Mr.Helekar, both petitions are liable to be dismissed with costs.

The Issues :

28. The rival contentions give rise to the spinal issue as to whether in an industry covered by Bombay Industrial Relation Act, 1946 (BIR Act for short), the employees can resort to a strike in support of their charter of demand without complying with the provisions of the BIR Act and, whether compliance of the provisions of the MRTU & PULP Act would absolve the employees from giving a notice under BIR Act.

Statutory Schemes :

29. Before proceeding to consider the above issues; a glance at the

provisions of two legislations; their ambit and ambiance and their longevity, actual and potential may be desirable, after shaking the broad basics of the BIR Act and MRTU & PULP Act and its ends.

The BIR Act :

30. The BIR Act, which is the earlier statute, was enacted because “it was expedient to provide for the regulation of the relations of employers and employees in certain matters to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes”. Now, of course it is a matter of common knowledge - and it need not even be stated - that the object of the Act is to regulate the relations between the employers and the employees and naturally, therefore, principally, the Act deals with what are called “industrial matters”. “Industrial matter” is defied in Section 3(18) in very wide terms as including in its scope – and this say without reproducing the definition – every conceivable matter that would affect the relations between the employers and

employees. Thus, the great goal to which the BIR Act is geared is legal mechanism for canalizing conflicts along with conciliatory or adjudicatory processes. Then industrial matters are specified in three schedules to the Act being Schedules I, II and III and they are dealt with as I will presently point out, by the provisions of the Act somewhat separately and differently.

31. Without going into the details, a quick glance at the scheme of the BIR Act will reveal that chapter-I provides for the definitions and the extent and applicability of the Act. Chapter-II provides for the authorities to be constituted or appointed under the Act, whereas Chapter-III deals with the registration of Unions.

32. Chapter-IV provides for approved union. Chapter-V deals with the representatives of employers and employees and appearance on their behalf. Section 27-A therein states that, except as provided in Sections 32, 33 and 33-A, no employees should be allowed to appear or

act in any proceeding under the Act except through the representative of employees. Section 30 sets out who the representative of employees is. It states the order of preference in this behalf and the most preferred category is “a representative union for such industry”. Sub-clause (v) of Section 30 refers in specific, provides that the persons elected by the employees in accordance with the provisions of Section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves. Section 28 reads as under;

> ***28. Election of representatives of employees***
>
> *(1) Where there is no Representative Union in respect of any industry in any local area, the employees in each undertaking in the industry and in each occupation therein may, in the prescribed manner, elect five persons from among themselves to represent them for the purposes of this Act.*
>
> > *Provided that no such persons shall be elected for any occupation the number of employees in which does not exceed ten.*
>
> *(2) The persons, if any, elected under sub-section (1) shall function in such manner as may be prescribed.*

(3) Within [two years] from the date on which an election under sub-section (1) is held, and within each succeeding [two years] thereafter, a fresh election shall be held;

provided that any person may be re-elected at any such election.

(4) The employees may in the prescribed manner recall any or all of the persons elected under sub-section (1) or (3).

(5) Vacancies in the number of the persons elected under sub-section (1) or (3) shall be filled by election in the prescribed manner.

33. Chapter-VI provides for powers and duties of labour officers, whereas Chapter-VII deals with such matters and provides that the industrial matters mentioned in Schedule I shall be governed by standing orders to be settled in accordance with the provisions set out in that chapter, and until such standing orders are settled and come into operation, they are to be governed by model standing orders, if any, notified by the State Government in respect of the particular industry or undertaking.

34. I next come to Chapter-VIII which deals with what are termed in the Act as “changes”. Now, “change” is defined in Section 3(8) as meaning an alteration in an industrial matter. Either an employer or an employee may desire to bring about a change. Where an employer desires to bring about a change, Section 42(1) provides that if the change is in respect of an industrial matter specified in Schedule II, he shall give notice of change in the manner prescribed. It may be noticed at once that if he desires to bring about a change in respect of an industrial matter specified in Schedule III, there is no corresponding obligation on the employer to give notice of change.

35. Coming next to the employee, if he desires a change, then Section 42(2) provides that if the change is in respect of an industrial matter not specified in Schedule I or III, he shall give notice of change in the manner prescribed. The difference between the two sub-sections must be noticed in that although the matters covered by the employee's notice

of change necessarily include the matters specified in Schedule II, they are also capable of including any other industrial matters which are not specified in any one of the three schedules. It would appear that if there were any such matters about which the employer wishes to bring about a change, he is under no obligation to give a notice of change, because he is bound to do so only in respect of matters specified in Schedule II and not others.

36. Section 42(4) further empowers the employees desiring the change in respect of matters specified therein to make an application to the labour court and in this case no notice of change is required. The matters referred to in this sub-section are three, the first two of which arise in respect of matters arising out of standing order under Schedule I and third in respect of any industrial matter specified in Schedule III. Then Section 44 (1) provides that an agreement may be arrived at within 7 days of notice of change under Section 42 and if it is so arrived at sub-section (2) makes provision

for registration of the agreement. Then Section 44B provides that if a settlement is arrived at within two months from the date of completion of any conciliation proceedings and, of course, this has reference to conciliation proceedings which followed as a matter of course upon notice of change being given such settlement is deemed to be an agreement for the purpose of Section 44 and can similarly be registered and Section 45 provides that a registered agreement which includes a registered settlement shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar. So that in respect of matters which relate to a change and which are initiated by notice of change there may be a registered agreement or a registered settlement, but if none of these things happens, there is yet provision in the Act in Chapter XI for determining the relations between the employer and the employees in respect of the proposed change by arbitration.

37. The arbitration results in an award and Section 75 provides that the

award shall come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published. Therefore, in respect of industrial matter where a notice of change has been given, the matter is determined either by registered agreement or a registered settlement or an award which is published, and in respect of the award or rather the effect of the award the position is precisely the same as the position in respect of a registered agreement or a settlement, for Section 114 (1) in terms provides that a registered agreement or a settlement or an award shall be binding upon all persons who are parties thereto. Now, when this situation is brought about, there is another consequence following for the fact that there is a registered agreement or the settlement or an award which is binding on the parties and the provision in that regard is to be found in Section 64 (a) (iii) and that provision is;

> *“No conciliation proceeding in respect of an industrial dispute shall*

(a) be commenced if -

(i) ....

(ii) ....

(iii) by reason of a direction issued under sub-section (2) of Section 114 or by reason of any of the other provisions of this Act the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award."

(b) .... "

By virtue of Section 114 (1), which is a provision of the Act, the parties are bound by a registered agreement, settlement or an award and, therefore, no conciliation proceeding in respect of any matter determined by such agreement, settlement or award are required to be commenced so long as the agreement, settlement or award remains effective. Now, going back to Section 46 which deals with illegal change. Sub-section (1) provides that any change in any standing orders made without following the procedure prescribed in Chapter VII to

which I have already referred, is illegal.

38. The statutory regulation of industrial dispute is comprehensive, as is manifest from the rest of the Act. Chapter-XIV prohibits strikes and lock-outs and makes closure of work by employer in certain circumstances illegal and provides for reference to the Industrial Court for declaration whether strike, lockout, closure or stoppage of work is illegal. Chapter-XV deals with constitution of court of enquiry; constitution, duties and powers thereof. It has a power to enquire into such industrial matters, as may be referred to it by the State government including any matter pertaining to conditions of work or relations between the employer and employees in any industry, and any aspect of any industrial dispute. Chapter-XVI puts teeth into the provisions by enacting penalties. Importantly, Section 130, which provides for penalty for declaring or commencing illegal strike or illegal stoppage of work by employees.

39. There are miscellaneous

provisions to take care of other residuary matters and we get a comprehensive picture and design to deal, not piecemeal but wholesale with special provisions to investigate and settle industrial disputes.

40. A bird's eye view of the BIR Act reveals the statutory structure and legal engineering centering around dispute settlement in industries according to the rule of law and away from fights with fists or economic blackmail. The soul of the statute is not contract of employment, uniformity of service, conditions or recruitment rules but conscionable negotiations, conciliations and adjudication of disputes and differences animated by industrial justice, to avoid a collusion which may spell chaos and imperil national efforts at increasing the tempo of production.

The MRTU & PULP Act :

41. Now, turning to the scheme of the MRTU & PULP Act, it would be clear that the said Act was enacted “to provide

for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights, and obligations; to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid".

42. Section 3 is the definition section. Sub-section (1) states that the "Bombay Act" means BIR Act and sub-section (2) says that "Central Act" means the Industrial Disputes Act, 1947. "Employee" is defined by sub-section (5) to mean, in relation to an industry to which the BIR Act applies, and employee as defined in Section 3 (13) thereof. Similarly, an "employer" and an "industry" are defined by sub-sections (6) & (7) respectively, in

relation to an industry to which the BIR Act applies, with reference to the meanings of these words therein. A “recognized union” is defined by sub-section (13) to mean a union which has been issued a certificate of recognition under Chapter III of the Act. Sub-section (16) defines “unfair labour practices” to mean those defined in Section 26. Sub-section (17) says that “union” means a trade union of employees registered under the Trade Unions Act, 1926. Sub-section (18) states that words and expression used in the Act and not defined therein but defined in BIR Act, shall, in relation to an industry to which the BIR Act applies, have the meanings assigned to them by the BIR Act.

43. Chapter III deals with the recognition of unions and Section 10 (2) therein states that the provisions of Chapter shall not apply to undertakings and industries to which the provisions of BIR Act apply.

44. Chapter IV deals with the obligations and rights of the recognized

unions, other unions and certain employees. Section 20 sets out the rights of recognized unions. These include the right to collect sums payable by members to it on the premise where wages are paid and to hold discussions with the employees and the employer. It also states that where there is a recognized union for any undertaking no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Industrial Disputes Act, not being the proceeding in which the legality or propriety of an order of dismissal, discharge or the like is under consideration, except through the recognized union and the decision arrived at or order made in such proceedings shall be binding on all the employees in such undertaking and the provisions of the Industrial Disputes Act shall stand amended in this behalf, as specified in Schedule I to the said Act. Section 21 states that no employee in an undertaking to which the provisions of the Industrial Disputes Act apply shall be allowed to appear or to act or be represented in any proceeding relating to unfair labour

practices specified in Items 2 and 6 of Schedule IV except through the recognized union. Schedule IV deals with general unfair labour practices on the part of employers. Item 2 thereof deals with the abolition of work of a regular nature be done by employees and the giving of such works to contractors as a measure of breaking strike. Item 6 deals with the employment of employees as “badlis”, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees. Section 22 sets out the rights of unrecognized unions and gives them a right to meet and discuss with the employer the grievance of any individual member relating to his discharge, removal and the like. It also entitles unrecognized unions to appear on behalf of their members employed in the undertaking in any domestic or departmental inquiry.

45. Chapter-V deals with illegal strikes and lockouts. Sub-section (1) of Section 24 defines illegal strike, whereas sub-section (2) defines illegal lockouts.

Section 25 provides for reference to Labour Court for declaration whether strike or lockout is illegal.

46. Unfair labour practices are dealt with by Chapter VI and Section 26 defines them to mean the practices listed in Schedules II, III and IV. Schedule II deals with the unfair labour practices on the part of employers. Schedule III deals with unfair labour practices on the part of trade unions and Schedule IV deals with general unfair labour practice on the part of employers. Section 27 debars employers, unions and employees from engaging in any unfair labour practice. Section 28 sets out the procedure for dealing with complaints relating to unfair labour practices. The order of the Court thereon is, by reasons of Section 29, binding on, inter alia, all parties to the complaint and those summoned to appear before the Court. Where the party to the complaint or summoned to appear before the Court is composed of employees, all persons who on the date of complaint were employed in the undertaking to which the complaint relates and all persons subsequently employed

therein are bound by the order of the Court.

47. The nature of the order which court can pass on such complaint filed under the Act is indicated in by clauses (a), (b) and (c) of Section 30(1) of the said Act. If the orders of the Court whether final or interim are not complied with by the party against whom such orders are passed, it can be prosecuted under sub-section (1) of Section 48 of the Act.

48. Having scanned the aforesaid relevant provisions, it is clear that the MRTU & PULP Act is brought on the statute book with the avowed purpose of regulating the activities of trade unions and for preventing certain unfair labour practices both on the part of unions of employees as well as the employers. As laid down by Section 2(3) of the Act, the Act has to be apply to the industries to which BIR Act, for the time being applies and also to any industry as defined in clause (j) of Section 2 of the I.D.Act and also to the State Government which in

relation to any industrial dispute concerning such industry is the appropriate government under that Act. Thus, the Act sought to supplement land cover the field for which the concerned industries governed by the then I.D. Act and also to the State Government which in relation to any industrial dispute concerning such industry is the appropriate government under the Act. Thus, the Act sought to supplement and cover the field for which the concerned industries governed by the then I.D. Act and BIR Act did not get any coverage and that field was, obviously. amongst others the field pertaining to prevention of unfair labour practices as defined by the Act.

49. Thus, prevention of the unfair labour practice, as per the Act, is the aim of the Act. However, the nature of the provisions of the Act are summary in nature as held by the Apex Court in the case of **Cimpla Ltd. v. Mah. General Kamgar Union & ors.**, 2001 (1) CLR 754.

Consideration :

50. Having considered the statutory schemes of the BIR Act and MRTU & PULP Act, now let me address to the question whether there is any repugnancy between the BIR Act and MRTU & PULP Act. The answer has to be in negative considering the preamble of the MRTU & PULP Act which clearly indicates that the said Act is brought on the statute book with a view to supplement and cover the field for which the concerned industries governed by the then I.D Act and the BIR Act did not get any coverage and that field was, obviously, amongst others the field pertaining to the prevention of unfair labour practices as defined by the Act.

51. In this behalf, it will not be out of place to mention that the Apex Court in the Case of **Shramik Utkarsh Sabha vs. Raymond Woolen Mills Ltd. and others [AIR 1995 SC 1137**] had an occasion to consider the submission that the BIR Act and MRTU & PULP Act operate in

different fields.

The Apex Court rejecting the above submission advanced before it held and observed that both the Acts do not operate in different fields and there is commonality in their objects being complementary to each other. The observations of the Apex Court in this behalf are as under;

> *"13. The M.R.T.U. & P.U.L.P. Act takes note of the provisions of the B.I.R. Act. Many of its definitions are stated to be those contain in the B.I.R Act. Chapter III which deals with the recognition of unions, States, in Section 10 (2), that its provisions do not apply to undertakings in industries to which the provisions of the B.I.R Act apply. The B.I.R Act was enacted to provide for the regulation of the relation of employers and employees in certain matters and to consolidate and amend the law in relation to the settlement of industrial disputes. The M.R.T.U & P.U.L.P Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognized unions; and to define and provide for the prevention of unfair labour practices; and to constitute courts*

in this behalf. It cannot, therefore, be said that the B.I.R Act and the M.R.T.U & P.U.L.P Act operate in different fields. There is commonality in their objects and their provisions. The obvious intent of the legislature which enacted them was that they should operate in tandene (tandem) and complement each other in respect of industries to which the B.I.R Act had been made applicable. The two statues must be read together."

52. In the aforesaid backdrop, if objects of both the legislations are complementary to each other, then it would be the bounden duty of the Courts to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases of industrial disputes.

53. In **Mahendra L. Jain v. Indore Department Authority**, 2005 (1) SCC 639, the Apex Court followed its earlier view in **M.P. Vidyut Karmachari Sangh v. M.P. Electricity Board**, 2004 (9) SCC 755; wherein it was clearly held that when two

statutory rules operate in the field, unless the rules and regulations framed by the statutory authority are inconsistent with the provisions of the Act and the rules framed thereunder, provisions of both statutes are required to be followed. This view was followed by the Apex Court in the case of **M.P. State Agro Industries Development Corporation Ltd. v. S.C. Pandey**, 2006 (2) SCC 716. The said principle laid down in these decisions applies on all force to the facts of these cases at hand.

54. When one has to resort to the thinking process and attitude according to the underlying philosophy of labour jurisprudence and apply the laws meant for industrial peace and harmony, then the conclusion becomes irresistible that the employees who want to resort to strike must follow provisions of both the legislations, especially, when both of them are complementary to each other. The object of one legislation viz. BIR Act is to resolve industrial dispute; whereas the object of the another legislation, namely, MRTU & PULP Act is to prevent unfair

labour practices on the part of employers; employees and the unions.

55. Both employers and employees have their respective obligations. They must appreciate each other's responsibilities, duties and obligations. The trade union, labour union, labour representatives and workers should understand and appreciate the fact that the legislations are legislated for solving industrial disputes. Legislations provide for various modes, machineries and authorities to adjudicate upon the dispute. Therefore, it would not be advisable to allow either employers or employees to by-pass the legislation occupying the field. It must be understood by all concerned that both employers and employees are vital for any industry; and unless there is proper coordination, the smooth functioning of any industry would be difficult.

56. Having said so, let me turn to the last submission advanced by the leaned counsel for the respondents based on Section 59 of the MRTU & PULP Act which

provides for bar of proceedings under the Bombay or Central Act. Section 59 of the MRTU & PULP Act reads as under:

> **59. Bar of proceedings under Bombay or Central Act:-** If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act.

57. If one turns to the facts of the instant cases at hand keeping in mind the above statutory provisions, it will be clear that dispute sought to be raised before the Labour Court was with respect to the illegality of the strike resorted by the employees; whereas in the proceedings instituted before the Industrial Court the question was whether the act of employer leading to ad hoc appointments during the period of strike constituted an unfair labour practice on

the part of the employer. The substantive reliefs claimed in both the proceedings were altogether different, though one of the issues involved in both the proceedings was overlapping. Trial of such issue is not prohibited. The petitioner could not have instituted proceedings, for getting the strike declared as illegal for noncompliance of the provisions of the BIR Act, under the MRTU & PULP Act nor the respondents-employees could have made complaint for prevention of unfair labour practices on the part of the employer under the the provisions of the BIR Act. Thus, the matter involved in both the proceedings was falling in two different legislations. Hence bar under provisions of Section 59 of the MRTU & PULP Act, sought to be pressed into service by the respondents, is misplaced.

58. In the above view of the matter, I have no hesitation to hold that it was obligatory on the part of the respondents to comply with the provisions of the BIR Act in addition to the compliance of the provisions of MRTU &

PULP Act. Both the legislations being complementary to each other, compliance thereof was necessary.

59. Factual matrix reveals no dispute that there was no compliance whatsoever of the provisions of the BIR Act. The employees proceeded on strike without following the provisions of the BIR Act. No submissions were advanced by the learned counsel appearing for the respondents justifying compliance of the provisions of the BIR Act before proceeding on to strike. The strike was, thus, illegal on the touchstone of the provisions of the BIR Act.

60. In the conclusion, the impugned orders are unsustainable for the reasons recorded hereinabove. Both orders impugned in these petitions are, therefore, liable to be quashed and set aside.

61. In the result, both petitions are allowed. The impugned orders are quashed and set aside. Rule in both petitions made absolute in terms of

this order with no order as to costs.

JUDGE